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Supreme Court of the United States

October Term, 1959

No. 882

MAX WINZELBERG, an Individual,
Petitioner,

v.

R. K. BAKING CORP., and BAKERY & PASTRY DRIVERS AND HELPERS UNION, LOCAL NO. 802, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents,

and

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Bakery and Pastry Drivers and Helpers Union, Local No. 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, one of the Respondents named herein respectfully submits this brief in opposition to the petition for a writ of certiorari.

Reasons for Denying the Writ and Arguments Thereon

A. Petitioner was not a party in the Court of Appeals.

The Petitioner has invoked the jurisdiction of this Court under 62 Stat. 928, 28 U. S. C. § 1254 (1), pursuant to 49 Stat. 453, 29 U. S. C. § 160 (e), as amended (petition, p. 3).

Such jurisdiction does not exist by reason of the fact that the Petitioner was not a party to the suit below and thus may not seek a writ of certiorari.

Section 1254 of title 28, in pertinent part, provides:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

The limitation imposed by this statutory language is explicit and its application has been uniform. This Court has declared it to be a cardinal requirement that one invoking the appellate jurisdiction of the Supreme Court to review a decision of a lower court shall establish his status as a party to the record and judgment in the court below. This is true in respect both to applications for certiorari and appeals.

Posner v. *Anderson*, 293 U. S. 53;
Industrial Commissioner of New York v. *Irving Trust Co.*, 286 U. S. 543;
In the Matter of Leaf Tobacco Board of Trade, 222 U. S. 578;
Indiana Southern R. Co. v. *Liverpool, L and G Ins. Co.*, 109 U. S. 168;
Ex Parte Cockcroft, 104 U. S. 578;
Payne v. *Miles*, 20 How. 219;
Baya'd v. *Lombard*, 9 How. 530.

The Board, on March 20, 1959, petitioned the Court of Appeals for enforcement of its order of May 6, 1958 against Respondent R. K. Baking Corporation (hereinafter called "R. K.") and Respondent Bakery and Pastry Drivers and Helpers Union, Local No. 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called the "Union"). The petition

was duly docketed as No. 25576. R. K. and the Union, the respondents named in the petition, each duly filed an answer to the petition. Subsequently, the Board as Petitioner, R. K. and the Union as Respondents, each submitted briefs to the Court of Appeals. On November 6, 1959, the Court of Appeals heard oral argument of counsel for the Board, R. K. and the Union.

The Petitioner, Max Winzelberg, did not appear at any stage of the proceedings before the Court of Appeals as petitioner, respondent, intervenor or in any capacity.

It is to be noted that the instant petition does not contain an assertion that Winzelberg was a party to the suit for enforcement. The best that Petitioner can do is identify himself as the complainant in the administrative proceeding before the Board. The requirement that the Petitioner for a writ of certiorari be a party is not satisfied thereby.

B. Only the National Labor Relations Board may seek and pursue the enforcement of its order.

It is clear from the petition herein that the Petitioner is in essence seeking to enforce an order of the Board (Petition, p. 12). He has no right to do so and therefore this petition must be denied.

The right to seek court enforcement exists only in the Board. In proceedings to enforce its orders, the Board acts in the public interest and not in the interest of adjudicating private rights. For this reason, individuals who may be beneficiaries under the provisions of a Board order have no enforcement rights. *Amalgamated Utility Workers* v. *Consolidated Edison Co. of New York, Inc.*, 309 U. S. 261; *Amalgamated Meat Cutters* v. *N. L. R. B.*, 267 F. 2d 169.

This Court, by its holding in the *Amalgamated Utility Workers* case, *supra*, has precluded all persons, other than

the Board, from enforcing in any manner the Board's order. Thus, in 309 U. S. at pages 265-6, the Court stated:

> "When the Board has made its order, the Board alone is authorized to take proceedings to enforce it * * * Again, the Act gives no authority for any proceeding by a private person or group, or by any employee or group of employees, to secure enforcement of the Board's order. The vindication of the desired freedom of employees is thus confided by the Act, by reason of the recognized public interest, to the public agency the Act creates * * *"

The Board has not sought a writ of certiorari in this case. It has accepted the decree of the Court of Appeals for the Second Circuit as the final adjudication of the enforcement proceedings. As the Act vests in the Board full power, authority and discretion with regard to the enforcement of its orders, the Petitioner is barred from seeking enforcement of the Board's order by the instant petition.

C. The granting of certiorari is not warranted.

While it is true that this Court may grant a writ of certiorari in a case "where a court of appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision" (Revised Rules of the Supreme Court of the United States, Rule 19(1)(b)), it is clear from the record that, contrary to Petitioner's assertions, this is not such a case. The Court of Appeals in denying in part, while enforcing in part, the order of the Board, properly exercised its power of review as established by the Labor Management Relations Act and defined by this Court.

The Act provides that "the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive". However, it is settled doctrine that the reviewing court may set aside or modify a Board decision in the absence of evidence supporting that decision. *Universal*

Camera Corporation v. *N. L. R. B.*, 340 U. S. 474; *N. L. R. B.* v. *Pittsburgh Steamship Company*, 340 U. S. 498.

The Court of Appeals, in its opinion dated December 24, 1959, stated that a thorough reading of the record failed to disclose any evidence which would support those portions of the Board's order to which the Court denied enforcement. (Board's Appendix, pp. 296-303).

It is the Court of Appeals which is charged with the normal and primary responsibility for granting or denying enforcement of Board orders. This Court will not "review a conflict of evidence nor reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way". *N. L. R. B.* v. *Pittsburgh Steamship Co., supra.*

The record presented to this Court does not warrant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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